IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.6918 of 2006
Date of Decision : December 22, 2006.

Satpal Jaura ..... Petitioner

Vs.

Shanti Devi ..... Respondent

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Ms.Rupinder K.Thind, Advocate
for the petitioner.

* * *

P.S.Patwalia, J. (Oral) :

The present revision petition has been filed challenging order dated 23.11.2006 vide which the Civil Court allowed an application under Order 9 Rule 13 filed by the respondent and set aside an ex parte decree dated 6.11.2001.

The petitioner who was the plaintiff in the suit is the son of respondent who was the defendant. He filed a suit for possession by way of specific performance of alleged agreement to sell dated 4.3.1999 pertaining to a house and land. The suit was got decreed ex parte. When the respondent had gone to *patwarkhana* to seek *jamabandi* of her land, she came to know that a sale deed had been executed and mutation sanctioned relating to her land on the basis of an ex parte decree. It is therefore that she moved an application seeking the setting aside of the ex parte decree. The trial court has framed issues and after the parties had led evidence found merit in the application and set aside the ex parte decree. The trial court has noted that the petitioner who was the son of the respondent, intentionally gave an incomplete address of the respondent as "G.T.Road, Verka,

Amritsar". The suit related to the same property where the respondent was residing and in the prayer clause the same property had been correctly described as "No.542, G.T.Road, Guru Nanak Road, Verka, Amritsar". The trial court also found that it had come on evidence that the process server allegedly met the respondent on the G.T.Road and asked to sign the summons where she was alleged to have refused and the same have been said to have affixed on the G.T.Road. It is in these circumstances that the report of refusal was made. The relevant observations of the trial court are as hereunder :-

> *"The address of Shanti Devi as given is G.T.Road, and the process server met her on G.T.Road and as allegedly asked her to sign and then he is alleged to have pasted the summons on G.T.Road. No where stated that on the door or house of Shanti Devi but on G.T.Road. The report of refusal was made accordingly."*

The trial court has also found that the petitioner-plaintiff has concealed the correct address of the house where the respondent was residing. The observations of the court to this effect are as hereunder :-

> *"2nd important point to be noted is that it is admitted by the respondent/plaintiff that the house where Shanti Devi and Raj Paul son of Shanti Devi is residing is the house in dispute. Now does that house carry any house number of the locality would be very much relevant and important. The plaintiff/respondent has concealed these very material facts from the Ld. trial court. The headnote of the plaint of the suit filed by the plaintiff is very relevant and important which is as under :-*

> *"Suit for possession by way of specific performance of an agreement to sell dated 4.3.99 pertaining to one house measuring approximately 250 Sq. yards forming part of Khasra No.1060 min Khata No.436 at present bearing Pvt.No.542, G.T.Road, Guru Nanak Road, Verka, Amritsar....."*
>
> *Now important to note is that at the time of filing of the suit, the house in dispute carried No.542, Guru Nanak Road (in fact it is Guru Nanak Nagar) Verka whereas the address of Smt. Shanti Devi wife of Sh. Rattan Chand has been shown having her residence G.T.Road , Verka, Amritsar, which is very vague and incomplete. Similarly, the process server, who went to get service effected, has presented the summons to Smt. Shanti Devi on alleged address, and then affixed the copy of summons and plaint etc. on G.T.Road, not in any residence. Even the pension book produced by Hari Dass as also finds his house number, locality and his house is just opposite to the house in dispute."*

Still further the trial court has also found that the report of refusal was procured by the plaintiff within a very short time which was not clearly possible. The relevant observations of the trial court to this effect are as hereunder :-

> *"Perusal of the file shows that on the adjourned hearing i.e. 9.6.2001, the case stood adjourned to 26.7.2001 for service of defendant on*

9.6.2001 and for that date also the plaintiff was required to file PF/RC, but on the same date, one application is moved by the counsel for the plaintiff that summons have been placed on file, the file be taken up and summons be placed on file. The Ld. court immediately seeks explanation from the concerned Ahlmad and the date is changed to 12.6.2001 and on the basis of previous summons service of defendant/present applicant is ordered for 12.6.2001 through munadi fee of Rs.20/-. The application was allowed on 11.6.2001, amount of Rs.20/- is deposited with the Nazir on 11.6.01, the Ahlmad concerned prepares the summons on 11.6.01 for 12.6.01 for service of the defendant through munadi, the same are signed by the Ld. court without any date again the Nazir allots the said summons to the process server on 11.6.01 and the munadi in village Verka again on GT Road is affected on 11.6.2001 on the same day.

Things seems to have been done by procuring the presence of Nazir, Ahlmad, Process Server etc. around the court itself and the things have been done so fast which is neither possible nor feasible. It is a case where the process was completed in such short time which is not at all possible under any circumstance."

It is on the aforesaid conclusions that the court has set aside the ex parte judgment and decree.

I do not find any error in the view taken by the trial court. The

facts of this case inescapably conclude that the respondent had not been duly served in the suit. I therefore find no merit in the present revision petition and the same is accordingly dismissed.

December 22, 2006 (P.S.Patwalia)
monika Judge